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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/702,093	10/30/2000	Alison Salyer Bagwell	15260	7880

7590 11/27/2002

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EXAMINER

REDDICK, MARIE L

ART UNIT

PAPER NUMBER

1713

DATE MAILED: 11/27/2002

14

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application N .

09/702,093

Applicant(s)

BAGWELL ET AL.

Examiner

Judy M. Reddick

Art Unit

1713

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 September 2002.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-53 is/are pending in the application.
- 4a) Of the above claim(s) 14-53 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_                      6) ☐ Other:

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**DETAILED ACTION**

**El ction/Restricti ns**

1. ***Claims 14-53 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Invention, there being no allowable generic or linking claim.***

**Claim Rejections - 35 USC § 102**

2. ***The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:***

***A person shall be entitled to a patent unless –***

***(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.***

3. ***The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:***

***(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.***

4. ***Claims 1-13 stand rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Battrell as per reasons of record per paper no. 11, 06/18/02, paragraph no. 7. Further, the organic fabric softening agents of Battrell include organic cationic softeners(cols 6-8).***

**Claim Rejections - 35 USC § 102**

5. ***Claims 10-13 stand rejected under 35 U.S.C. 102((b or e)) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Sakkab, Cheng, Ives et al or Dovey et al as per reasons of record per paper no. 11, 06/18/02, paragraph no. 10.***

**Respons to Arguments**

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6. *Applicant's arguments filed 09/23/02 have been fully considered but they are not persuasive.*

***Relative to Battrell, Sakkab, Cheng, Ives et al and Dovey et al-----The crux of Counsel's arguments appears to hinge on the additional components of patentees being excluded from the claimed composition. Firstly, "comprising" is an open door invite for additional components, i.e., "comprising" leaves the claims open for the inclusion of unspecified ingredients, even in major amounts(Ex parte Davis, 80 USPQ 448). Secondly, while Counsel argues that the unwanted components of the prior art would be considered detrimental if added to the claimed composition, mere attorneys arguments, unsupported by factual evidence, are given little weight(In re Lindner, 173 USPQ 356).***

**Conclusion**

7. ***THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).***

***A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.***

***Any inquiry concerning this communication or earlier communications from the examiner should be directed to Judy M. Reddick whose telephone number is (703)308-4346. The examiner can normally be reached on Monday-Friday, 6:30 a.m.-3:00 p.m..***

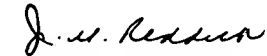
***If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached on (703)308-2450. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9310 for regular communications and (703)892-9311 for After Final communications.***


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***Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)305-8183.***

  
**Judy M. Reddick**  
**Primary Examiner**  
**Art Unit 1713**

**JMR**   
**November 25, 2002**